IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Maxwell Little, et al., Plaintiffs, v. JB Pritzker for Governor, et al., Defendants.	No. 1:18-CV-06954 Honorable Virginia M. Kendall

DEFENDANTS' MOTION FOR SANCTIONS

Defendants JB Pritzker for Governor (the "Campaign"), Juliana Stratton, and Caitlin Pharo (collectively, "Defendants"), by and through their undersigned counsel, move the Court to impose sanctions for Plaintiffs Maxwell Little, Jason Benton, Jelani Coleman, Celia Colón, Kasmine Calhoun, Erica Kimble, Nathaniel Madison, Tiffany Madison, James B. Tinsley, Mark Walker, Kayla Hogan, and Eric Chaney's (collectively, "Plaintiffs") continued failure to comply with their discovery obligations, including those ordered by the Court on October 22.[1]

1. After weeks of attempting to schedule Plaintiffs' depositions, *eight* Plaintiffs still have not provided available dates for their depositions to occur by the extended December 10 deadline.

2. In addition, none of the Plaintiffs have supplemented the information they withheld from their interrogatory responses based on untimely objections that the Court ruled they had waived. They have taken the position that the Court ordered them only to supplement their document productions.

[1] Before filing this motion, Defendants' counsel met and conferred with Plaintiffs' counsel via phone to discuss dates for scheduling Plaintiffs' depositions. *See* Local Rules N.D. Ill. LR 37.2; Declaration of William B. Stafford in Support of Defendants' Motion for Sanctions ("Stafford Decl.") ¶ 55. Defendants' efforts to resolve the impasse regarding scheduling those depositions short of seeking the Court's intervention are more fully detailed in the LR 37.2 certification in the memorandum filed in support of this motion and in the Declaration of William B. Stafford in Support of Defendants' Motion for Sanctions, both of which accompany this motion.

3. Plaintiffs' continued failure to comply with their discovery obligations prejudices Defendants' ability to prepare for the depositions, complete discovery, and defend against Plaintiffs' claims.

4. Defendants regret having to come before the Court again to raise these issues, but they have been left with no choice after Plaintiffs' failure to comply with the Court's order granting Defendants' earlier motion to compel.

5. Accordingly, Defendants request that the Court enter an order (1) dismissing with prejudice the claims of the eight Plaintiffs[2] whom counsel have refused to provide dates for depositions to occur by December 10, (2) compelling the remaining four Plaintiffs[3] to supplement their interrogatory responses with information withheld on the basis of untimely and waived objections and ordering Plaintiffs and their counsel pay Defendants' reasonable fees and costs associated with retaking any deposition based on late supplementation, and (3) granting Defendants' reasonable attorneys' fees and costs in bringing this motion.

WHEREFORE, for the reasons in the Memorandum filed concurrently herewith, Defendants respectfully ask the Court to grant their motion for sanctions.

[2] Mr. Benton, Mr. Coleman, Ms. Colón, Ms. Calhoun, Ms. Kimble, Mr. Walker, Ms. Hogan, and Mr. Chaney.
[3] Mr. Little, Mr. Tinsley, Ms. Madison, and Mr. Madison.

Dated: November 21, 2019

Respectfully Submitted,

JB PRITZKER FOR GOVERNOR, JULIANA STRATTON, AND CAITLIN PHARO

By: */s/ William B. Stafford*
One of Their Attorneys

William B. Stafford
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Tel: (206) 359-8000
Fax: (206) 359-9000
WStafford@perkinscoie.com

CERTIFICATE OF SERVICE

I, William B. Stafford, certify that on November 21, 2019, a copy of the foregoing was sent via the Court's electronic filing system and email to the following:

Jeanette Samuels
SAMUELS & ASSOCIATES, LTD.
2925 S. Wabash Avenue, Suite 104
Chicago, Illinois 60616
Tel: (872) 588 – 8726
Fax: (872) 444 – 3011
sam@chicivilrights.com

Shay T. Allen
THE LAW OFFICE OF SHAY T. ALLEN
19150 S. Kedzie Ave., Ste. 201
Flossmoor, IL 60422
Tel: (708) 960-0113
sallen@attorneyshaytallen.com

By: */s/ William B. Stafford*

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Maxwell Little, et al., Plaintiffs, v. JB Pritzker for Governor, et al., Defendants.	No. 1:18-CV-06954 Honorable Virginia M. Kendall

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SANCTIONS

Defendants JB Pritzker for Governor (the "Campaign"), Juliana Stratton, and Caitlin Pharo (collectively, "Defendants"), provide this memorandum in support of their motion requesting that the Court impose sanctions for Plaintiffs Maxwell Little, Jason Benton, Jelani Coleman, Celia Colón, Kasmine Calhoun, Erica Kimble, Nathaniel Madison, Tiffany Madison, James B. Tinsley, Mark Walker, Kayla Hogan, and Eric Chaney's (collectively, "Plaintiffs") continued failure to comply with their discovery obligations, including those ordered by the Court on October 22.[1] Defendants request that the Court enter an order (1) dismissing with prejudice the claims of the eight Plaintiffs[2] whom counsel have refused to provide dates for depositions to occur by December 10, (2) compelling the remaining four Plaintiffs[3] to supplement their interrogatory responses with information withheld on the basis of untimely and waived objections and ordering Plaintiffs and their counsel to pay Defendants' reasonable fees and costs associated with retaking any deposition based on late supplementation, and (3) granting Defendants' reasonable attorneys' fees and costs in bringing this motion.

[1] Before filing this motion, Defendants' counsel met and conferred with Plaintiffs' counsel via phone to discuss dates for scheduling Plaintiffs' depositions. *See* Local Rules N.D. Ill. LR 37.2; Declaration of William B. Stafford in Support of Defendants' Motion for Sanctions ("Stafford Decl.") ¶¶ 55. Defendants' efforts to resolve the impasse regarding scheduling those depositions short of seeking the Court's intervention are more fully detailed in the LR 37.2 certification below and in the Declaration of William B. Stafford in Support of Defendants' Motion for Sanctions, which accompanies this memorandum.

[2] Mr. Benton, Mr. Coleman, Ms. Colón, Ms. Calhoun, Ms. Kimble, Mr. Walker, Ms. Hogan, and Mr. Chaney.

[3] Mr. Little, Mr. Tinsley, Ms. Madison, and Mr. Madison.

TABLE OF CONTENTS

Page

I. INTRODUCTION

Defendants regret the need to file this motion to again seek the Court's intervention to address Plaintiffs' ongoing failure to comply with their discovery obligations. Last month, the Court granted Defendants' motion to compel Plaintiffs to sit for their depositions, produce documents that had been withheld based on untimely and waived objections, and supplement incomplete interrogatory responses for which Plaintiffs had also asserted untimely and waived objections. It provided Plaintiffs with specific deadlines to meet their discovery obligations. But, unfortunately, Plaintiffs continue to ignore those obligations. Defendants have exhausted other alternatives and have no choice but to seek sanctions.

Eight of the 12 Plaintiffs *still* have not provided any dates on which their depositions can be taken before the extended deadline, and *none* of the Plaintiffs have supplemented their interrogatory responses. Their refusal to cooperate in the discovery process prejudices Defendants' ability to defend themselves. Accordingly, Defendants request that the Court sanction Plaintiffs by dismissing with prejudice the claims of the eight Plaintiffs for whom their counsel still have not provided deposition dates, require the remaining four Plaintiffs to promptly supplement their interrogatory responses before the first deposition occurs on November 27, and award Defendants their reasonable attorneys' fees and costs for bringing this motion.

Defendants recognize the seriousness of seeking sanctions—and of dismissal, in particular. They sought to work directly with Plaintiffs' counsel for months before filing a motion to compel last month. After the motion was granted, Defendants spent weeks asking Plaintiffs to comply with their discovery obligations and the Court's order. Plaintiffs' consistent position has been that their counsel are simply too busy to complete discovery in the time period ordered by the Court. Defendants cannot effectively defend this case unless they take Plaintiffs' depositions, and the only way to do so now is to again extend discovery—which would effectively reward Plaintiffs' misconduct. In these circumstances, while dismissal is a serious sanction, Defendants respectfully submit it is the right one here.

II. LOCAL RULE 37.2 CERTIFICATION

On November 14, 2019, at 3:00 p.m. Central time, Defendants' counsel, William B. Stafford and Mallory Webster, conferred by phone with Plaintiffs' counsel, Jeanette Samuels. Stafford Decl. ¶ 55. During the November 14 conference, at Defendants' request, the parties discussed available dates for Plaintiffs to sit for their depositions and whether Plaintiffs intended to supplement their interrogatory responses as Defendants understood the Court had ordered when it granted Defendants' motion to compel. *Id.* ¶¶ 55, 59. Plaintiffs' counsel provided only four dates—one of which was the day before and one of which was the day after Thanksgiving—on which to take the depositions of the 12 Plaintiffs. *Id.* ¶ 51. Plaintiffs' counsel also said that Defendants would need to seek clarification of the Court's October 22 order, as Plaintiffs did not understand that the Court had ordered them to supplement their interrogatory responses. *Id.* ¶ 55.

The parties were unable to resolve the discovery issues during the conference.

III. FACTUAL BACKGROUND

The Court is familiar with Plaintiffs' failures to timely fulfill their discovery obligations, as Defendants outlined in their recent motion to compel. *See* Mot., ECF No. 48 (Oct. 15, 2019). Defendants recount those failures again here because they provide critical context. Plaintiffs' current failure to comply with the Court's October 22 order is part of a pattern of conduct throughout this litigation that has severely hindered Defendants' ability to defend against Plaintiffs' serious and baseless accusations. Defendants also detail the events occurring after the Court granted the motion to compel on October 22.

A. Defendants Respond to Plaintiffs' Discovery Requests Despite Plaintiffs' Failure to Meet and Confer About their Overbroad and Vague Discovery Requests

On May 7, 2019, Mr. Little served requests for production and interrogatories, and two days later, Mr. Benton served an additional set of requests for production. Stafford Decl. ¶ 2. On

June 13 and 17, Defendants timely served their responses and produced hundreds of responsive documents.[4] *Id.* ¶ 4.

Because many of the requests for production were significantly overbroad and vague, Defendants objected to several of the requests and—in their written responses to these requests—invited Plaintiffs' counsel to meet and confer about a reasonable scope for those requests and appropriate search terms to enable Defendants to locate additional responsive documents. *Id.* ¶ 5. Plaintiffs did not follow up on Defendants' offer to meet and confer regarding their requests. *Id.* ¶ 6.

On the Fourth of July, Plaintiffs' counsel sent a letter requesting that Defendants "respond" to Mr. Little's and Mr. Benton's discovery requests, even though Defendants had already fully responded. *Id.* ¶ 10. On July 12, Defendants answered the letter, stating that Defendants had indeed responded to the discovery, outlining again Defendants' responses, and again inviting Plaintiffs' counsel to meet and confer about the scope of the requests. *Id.* Defendants' counsel further proposed specific dates for a meet and confer. *Id.* Once again, Plaintiffs did not respond to the invitation to meet and confer. *Id.* ¶ 11.

After it became apparent that Plaintiffs did not intend to respond to Defendants' offers to meet and confer regarding their concerns with Plaintiffs' overbroad requests, Defendants decided to do their best to provide further responses notwithstanding their objections. To that end, Defendants collected many thousands of documents from 26 document custodians, and then using search terms and a team of document review attorneys, searched the documents to identify potentially responsive documents. *Id.* ¶ 14. On September 17 and October 31, they produced additional documents resulting from this significant undertaking. *Id.* ¶¶ 29, 47. Plaintiffs' unwillingness to meaningfully confer with Defendants about Plaintiffs' discovery requests

[4] Defendants' counsel conferred with Plaintiffs' counsel on May 30 (well before the responses were due), seeking a short extension of one week for the respective deadlines to account for travel by a key client contact. *Id.* ¶ 3. Plaintiffs' counsel agreed. *Id.*

resulted in significant expense and time spent reviewing and producing the documents. *See id.* ¶ 14.

B. Plaintiffs Inexplicably Fail to Respond to Defendants' Discovery Requests Until Six Weeks After the Deadline

Not only did Plaintiffs not cooperate with Defendants regarding Plaintiffs' own discovery requests, they significantly delayed responses to Defendants' requests after unilaterally appropriating more time to respond and making repeated, unfulfilled promises to produce the responses.

Plaintiffs did not provide discovery responses or responsive documents by August 2, 2019, the date on which they were due.[5] *Id.* ¶ 12. They otherwise made no request for an extension or even any mention at all of the outstanding discovery. *Id.* ¶ 13.

When Defendants inquired on August 21 about the outstanding discovery, Plaintiffs' counsel said that "you'll have them [the responses] by next Friday" and gave no explanation about why Plaintiffs unilaterally appropriated extra time for their responses. *Id.* ¶ 15; *see also id.* ¶ 16, Ex. B. "[N]ext Friday"—August 30—came and went with no word from Plaintiffs. *Id.* ¶ 17.

Defendants then again on September 3 inquired of Plaintiffs about when Defendants could expect to receive responses. *Id.* ¶ 18. At that time, Defendants also served deposition notices. *Id.* ¶ 19. Plaintiffs did not respond. *Id.* ¶ 20. Counsel for Defendants emailed Plaintiffs' counsel again on September 6, reiterating that Defendants had expected to receive responses by August 30—itself four weeks after the responses were due and absent any request from Plaintiffs for an extension of the deadline—and requesting a meet and confer on the weeks-overdue responses. *Id.* ¶ 21. On September 9, Plaintiffs' counsel finally responded. *Id.* ¶ 22.

The parties met and conferred by phone the next day. *Id.* ¶ 23. Plaintiffs' counsel provided no explanation for the delay other than that one of the Plaintiffs—Ms. Kimble—had been in and out of the hospital (he did not say when or for how long or why Plaintiffs had not

[5] On July 3, 2019, Defendants served requests for production on each of the Plaintiffs and the Campaign and Ms. Stratton each propounded a single set of interrogatories on all Plaintiffs. *See id.* ¶¶ 7, 9; *id.* ¶ 8, Ex. A.

requested an extension). *Id.* ¶ 24. Plaintiffs' counsel promised to provide the discovery responses by September 13, and dates for deposition scheduling by September 12. *Id.*; *see also id.* ¶ 25. Ex. C. Again, the promised deadlines came and went with no responses, documents, or proposed deposition dates. *Id.* ¶ 26.

On September 16, Defendants' counsel again inquired of Plaintiffs' counsel why Plaintiffs had not provided the long-anticipated discovery responses or deposition dates. *Id.* ¶ 27; *see also id.* ¶ 25, Ex. B. Defendants' counsel also informed Plaintiffs that they had waived any objections to Defendants' discovery and that Defendants would be forced to move to compel responses and documents. *Id.* ¶ 27. When Plaintiffs' counsel responded later that day, he said promised to send dates to Defendants once he and his co-counsel could "get bad dates from all of our clients and cross reference those with bad dates between" he and co-counsel. *Id.* ¶ 28.

Finally, on September 19, Defendants received a CD containing the discovery responses and document productions. *Id.* ¶ 31. The discovery letter accompanying the materials was dated September 16—three days after Plaintiffs said they mailed the materials—and neither of the two separately mailed packages had any postmarks indicating when they had been sent. *Id.* Despite finally responding more than six weeks late, Plaintiffs nevertheless raised several objections, confirming during a subsequent meet and confer on October 1 that they withheld documents based on those untimely objections. *See id.* The verification pages that Plaintiffs submitted with their interrogatory responses further showed that several Plaintiffs did not complete their responses until September—well after the August 2 deadline. *Id.* ¶ 32. Ms. Kimble provided no responses or documents at that time. *Id.*

Nearly a week after Defendants received the responses and production, Plaintiffs finally provided information for scheduling deposition dates. *See id.* ¶¶ 34–35. Their first purported availability was nearly four weeks—November 25—*after* the discovery cutoff. *Id.* ¶ 35. Plaintiffs did not offer any earlier availability when Defendants' counsel raised the issue during a meet and confer on October 1. *Id.* ¶ 36.

C. Defendants Move to Compel Plaintiffs' Depositions and the Production of All Documents and Information Withheld Based on Waived Objections

Because Plaintiffs refused to appear for depositions before the discovery cutoff and withheld documents and information on the basis of untimely objections, on October 15, Defendants moved to compel Plaintiffs to sit for their depositions before the October 31 cutoff and to produce withheld documents and supplement their interrogatory responses. *See* Mot., ECF No. 48 (Oct. 15, 2019).

After filing the motion, Defendants informed Plaintiffs on October 18 that Defendants intended to move forward with Plaintiffs' depositions as then scheduled, starting the day after the October 22 presentment hearing. Stafford Decl. ¶ 39. On October 21, the day before the hearing, Plaintiffs' counsel responded that "[w]e will not be able to accommodate a deposition this Wednesday." *Id.* He further stated that his first availability would be the week of January 6, 2020—more than two months *after* the October 31 discovery cutoff and over a month *later* than he had previously said he had availability. *Id.*

That same day, Plaintiffs' other attorney sent a separate email with Ms. Kimble's discovery responses and document production, stating that she had "just returned from holiday and [saw] that Ms. Kimble's interrogatory answers and related production never made it out of my mailbox." *Id.* ¶ 41. The verification page of Ms. Kimble's interrogatories and several pages of her document production were cut off, such that Defendants could not determine when Ms. Kimble had completed her interrogatories or what some of the produced documents said. *Id.*

D. The Court Grants Defendants' Motion to Compel and Orders Plaintiffs to Fulfill Their Discovery Obligations

On October 22, the Court granted Defendants' motion to compel, extending until December 10 the deadline for Defendants to take Plaintiffs' depositions. *See* Order, ECF No. 52 (Oct. 22, 2019). The Court also ruled that because Plaintiffs asserted untimely objections to Defendants' discovery requests, those objections were waived. *See* Stafford Decl. ¶ 42. The Court therefore further ordered Plaintiffs to identify by November 1 what documents they were withholding based on waived objections and to "supplement or respond to deficien[t] requests"

no later than November 8. Order, ECF No. 52 (Oct. 22, 2019) at 1. Plaintiffs have not complied with the Court's orders. Stafford Decl. ¶ 61.

E. Despite the Court's Order, Plaintiffs and Their Counsel Have Not Provided Dates for Eight of Their Depositions or Full Interrogatory Responses

Right after the hearing on October 22, Defendants' counsel asked Plaintiffs' counsel to provide dates on which Plaintiffs could be available for their deposition. *Id.* ¶ 43. Two days later, on October 24, Defendants emailed Plaintiffs' counsel to again request deposition dates, asking for dates starting November 11 and running through December 10. *Id.* ¶ 44; *see also id.* ¶ 45, Ex. F. In that email, Defendants noted that they would be setting each deposition for a full day. *Id.* ¶ 44; *see also id.* ¶ 45, Ex. F. Defendants asked for dates starting November 11 so they would have an opportunity to review additional documents that the Court ordered Plaintiffs to produce by November 8. *Id.* ¶ 44; *see also id.* ¶ 45, Ex. F.

On October 31, one of Plaintiffs' attorneys finally responded, stating that he had given "feasible dates in a prior email." *Id.* ¶ 46. Those "feasible dates" started on January 6, 2020—once again *after* the Court-ordered deadline for completing the depositions. *Id.* Defendants followed up on that email again requesting deposition dates *before* the December 10 deadline as the Court had ordered.[6] *Id.* ¶ 47.

Plaintiffs' other attorney responded the next day about other matters, but she did not provide deposition dates or otherwise indicate when Plaintiffs planned to provide that information. *Id.* ¶ 48. Instead, she said that Plaintiffs "mailing additional records related to" prior lawsuits by two of the Plaintiffs—the only documents that she later confirmed had been withheld based on Plaintiffs' waived objections—and hard copies of the written discovery responses and documents that Ms. Kimble had produced on October 21. *Id.*

More than two weeks after the hearing, on November 6, Plaintiffs' counsel finally responded to Defendants' request for deposition dates. *Id.* ¶ 49. But her email contained no

[6] On October 31, Defendants produced an additional set of documents responsive to Mr. Little's and Mr. Benton's May 2019 document requests. *Id.* ¶ 47.

information about specific dates on which specific Plaintiffs were available, which is what Defendants had repeatedly requested. *Id.* She said, "I'm confirming with the Plaintiffs that they're available to go on the dates times [sic]. As a heads up, I [sic] next Thurs. and the next three Fridays." *Id.*; *see also id.* ¶ 50, Ex. G. This email was ambiguous, but Defendants believed it meant that Plaintiffs' counsel was actively speaking with Plaintiffs to "confirm" when particular Plaintiffs would be available for a deposition. *Id.* ¶ 49. Meanwhile, Defendants did not receive the previously withheld documents by the November 8 deadline the Court set. *Id.* ¶ 51. Defendants received those documents on November 12. *Id.*

Plaintiffs' counsel contacted Defendants the following week, stating that she had not "heard back regarding your availability to take depositions on the dates we proposed." *Id.* ¶ 52; *see also id.* ¶ 53, Ex. H. Defendants were confused by that email because Plaintiffs had never proposed *any* dates for their depositions. *Id.* ¶ 52. And in any event, Plaintiffs' counsel's email suggested that she was still checking with Plaintiffs about their availability. *Id.* ¶ 49. The parties agreed to meet and confer the next day to discuss deposition scheduling. *Id.* ¶ 54.

During that meet and confer on November 14, Plaintiffs' counsel provided only four available dates between November 27 and December 10 for Defendants to take the 12 depositions—with two of those four dates occurring the Wednesday before and the Friday after Thanksgiving.[7] *Id.* ¶ 55. She could not, however, say definitively which Plaintiffs would be available on which date, saying only that she thought Mr. Little would be available on one of the two November dates and that Ms. Madison and Mr. Madison may be available on December 6 and December 10, respectively. *Id.* ¶ 56. Plaintiffs' counsel indicated that she had not anticipated that Defendants would take full-day depositions, never mind that Defendants had expressly informed Plaintiffs they planned to set the depositions for full days, as allowed under the Federal Rules. *Id.*

[7] That position seems at odds with Plaintiffs' counsel's earlier representations that they generally had availability starting after November 25 or were not available until the week of January 6, 2020.

Defendants expressed surprise at Plaintiffs' position because the Court's ordered Plaintiffs to sit for their depositions by December 10. *Id.* Defendants also noted that although they would endeavor to make all four dates work, scheduling two depositions on the days falling on either side of the Thanksgiving holiday caused significant logistical difficulty in travel and arranging court reporters and office space. *Id.* ¶ 57. After Defendants pressed Plaintiffs on this position in light of the Court's order, the best their counsel offered was to let Defendants know if another day opened up before the December 10 deadline.[8] *Id.* ¶ 58.

During that meet and confer Defendants also inquired when they could expect Plaintiffs to supplement their interrogatory responses, given that the Court ruled their objections to Defendants' discovery requests were waived as untimely. *Id.* ¶ 59. Plaintiffs' counsel stated that they would not be doing so because, in their view, the Court ordered them only to produce documents withheld based on their waived objections. *Id.* They said that Defendants would need to seek the Court's clarification. *Id.*

After the meet and confer, Plaintiffs confirmed which Plaintiffs would be available on the four dates. *Id.* ¶ 61. Defendants have committed to taking the depositions on November 27, December 6, and December 10. *Id.* Despite their serious reservations at doing so, Defendants also intend to agree to schedule the November 29 deposition, despite the fact that Defendants counsel will need to take the deposition by video conference, as counsel cannot travel to Chicago given the Thanksgiving holiday, and that the Friday after Thanksgiving is a holiday for Defendants' counsel's law firm, necessitating that Defendants incur the expense of arranging outside space and support services for the deposition. *Id.*

In short, only *four* of the 12 Plaintiffs will be available for their depositions by the December 10 deadline, and they have never sought an extension (which Defendants would

[8] On the morning of November 20, Plaintiffs' counsel emailed to inform Defendants that her "settlement conference for tomorrow just got cancelled" and to ask if Defendants wanted her "to try to find a Plaintiff for a deposition tomorrow." *Id.* ¶ 60. Although Defendants appreciated the offer, they declined because Defendants did not think it was realistic to, on less than 24-hours' notice, prepare for an unknown Plaintiff's deposition (in the event Plaintiffs' counsel could secure one of the Plaintiffs to appear the next day), travel to Chicago to take the deposition, and schedule a conference room, court reporter, and videographer. *Id.*

oppose because there has been enough delay).

IV. ARGUMENT

A. Legal Standard

"Federal Rule of Civil Procedure 37(b)(2)(A) grants the district courts the power to impose appropriate sanctions for violations of discovery orders." *e360 Insight, Inc. v. Spamhaus Project*, 658 F.3d 637, 642 (7th Cir. 2011); *see also* Fed. R. Civ. P. 37(b)(2)(A) (When a party "fails to obey an order to provide or permit discovery," the Court "may issue further just orders."). That discretion allows the Court to impose "any sanctions" that are "reasonable under the circumstances." *e360 Insight*, 658 F.3d at 642. The appropriate sanction should be viewed "not in isolation but in light of 'the entire procedural history of the case.'" *Id.* at 643 (internal quotation marks omitted). The Court "may dismiss a case upon finding that the plaintiff, through his actions, displayed willfulness, bad faith, or fault."[9] *Collins v. Illinois*, 554 F.3d 693, 696 (7th Cir. 2009) (per curiam). In this context, "fault" refers to "the reasonableness of the conduct—or lack thereof—which eventually culminated in the violation." *Langley v. Union Elec. Co.*, 107 F.3d 510, 514 (7th Cir. 1997) (quotation marks omitted). Sanctions under Rule 37 "provide the district court with an effective means of ensuring that litigants will timely comply with discovery orders." *Melendez v. Ill. Bell Tel. Co.*, 79 F.3d 661, 670 (7th Cir. 1996). "[A]s soon as a pattern of noncompliance with the court's discovery orders emerges, the judge is entitled to act with swift decision." *Newman v. Metro. Pier & Exposition Auth.*, 962 F.2d 589, 591 (7th Cir. 1992).

In addition to (or in lieu of) other sanctions under Rule 37(b)(2)(A), "the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(b)(2)(C); *see also Houston v. C.G. Sec. Servs., Inc.*, 820 F.3d 855, 859 (7th Cir. 2016).

[9] For sanctions short of dismissal, negligence is sufficient. *See e360 Insight*, 658 F.3d at 642-43.

B. The Court Should Dismiss the Claims of the Eight Plaintiffs for Whom Counsel Continues to Withhold Deposition Dates

Throughout this case, Plaintiffs have failed to abide by the Rules and the Court's orders. This failure has been collective on the part of all twelve Plaintiffs, as explained above. Plaintiffs' overall pattern of misconduct and delay have hampered Defendants' ability to defend themselves against each of Plaintiffs' discrete claims. That said, Defendants are attempting to be targeted in the relief they seek.

Thus, while Plaintiffs' conduct to date would warrant this sanction against all twelve Plaintiffs, Defendants submit that, at the least, their pattern of disregard and noncompliance warrants dismissing with prejudice the claims of the eight Plaintiffs whom counsel continues to refuse to make available for depositions. *See* *Collins*, 554 F.3d at 697; *De Falco v. Oak Lawn Pub. Library*, 25 F. App'x. 455, 457 (7th Cir. 2001) ("We have frequently affirmed Rule 37 sanctions when there is a pattern of noncompliance with the district court's orders.").

During discovery, Plaintiffs refused—without any explanation whatsoever for weeks—to respond—even by their self-appropriated extended deadlines—to Defendants' discovery requests. *See* Stafford Decl. ¶ 31. They also refused to provide deposition dates before the original discovery cutoff on October 31, asserting then that their first availability was nearly a month after discovery was set to end. *Id.* ¶¶ 35, 39. They also failed to meet and confer about their own discovery requests until *after* the discovery cutoff, despite Defendants' multiple offers to do so. *Id.* ¶ 14. Plaintiffs' refusal to cooperatively discuss their discovery requests forced Defendants to undertake an extensive effort to identify and produce documents responsive to Plaintiffs' broad and vague document requests and incur significant, unnecessary costs as a result. *See id.*

But even after the Court compelled Plaintiffs to appear for their depositions by December 10 and to produce improperly withheld documents and information, Plaintiffs have continued their pattern of ignoring their discovery obligations and the Court's orders. *Eight* of the 12 Plaintiffs have provided no availability, despite the Court's order, for the full-day depositions sought by Defendants and allowed by the Federal Rules. *See* Fed. R. Civ. P. 30(d)(1) ("Unless

otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7 hours."). Defendants have been more than willing to work with Plaintiffs on a mutually agreeable deposition schedule. Parties should be able to work out basic scheduling issues themselves. But at this point, enough is enough.

Plaintiffs initiated this lawsuit. Their depositions are central to the case. Indeed, given the vagueness of Plaintiffs' Complaint, and their refusal to provide substantive answers to interrogatories, Defendants still do not understand the basic factual basis of Plaintiffs' claims.

The Seventh Circuit has affirmed dismissal of claims as a sanction for a pattern of conduct similar to that here. In *Collins v. Illinois*, the plaintiff refused to be deposed, gave "incomplete answers to the interrogatories and ignored requests for production of documents," which resulted in the court granted a motion to compel," and held up the scheduling of her deposition, necessitating an extension of the discovery cutoff to accommodate her deposition. 554 F.3d at 695. The district court dismissed the plaintiff's claims because she had "hindered the progress of her lawsuit" through her "pattern of disregard for discovery rules[,] including a failure to timely answer interrogatories and supply documents" and her refusal to sit for a deposition. *Id.* at 696–97. Based on that conduct, the Seventh Circuit held that "[t]he district court's choice of dismissal was reasonable." *Id.* at 696. The Court should impose the same sanction here and dismiss with prejudice the claims of the eight Plaintiffs who have not provided dates for their depositions to be taken before the extended deadline and have not supplemented their interrogatory responses.

Although Defendants recognize the seriousness of dismissal as a sanction, they are left with no choice but to request it. Anything short of dismissal would reward Plaintiffs for flouting the Court's orders and further prejudice Defendants' ability to defend themselves against Plaintiffs' claims. *See Hood v. R.R. Donnelley & Sons*, No. 13-CV-2055, 2013 WL 6508210, at *2 (C.D. Ill. Dec. 12, 2013) (holding that "dismissal is warranted in this case because of Plaintiff's continued failure to engage in discovery, even in the face of a Court order, and because of Plaintiff's overall failure to take his own case—and the Court's time—seriously").

Should the Court decline to dismiss the eight Plaintiffs' claims, however, Defendants request that Plaintiffs pay the reasonable costs and fees associated with Defendants taking those depositions after December 10. *See* Fed. R. Civ. P. 37(b)(2)(C). Although Defendants would prefer not to shift costs to Plaintiffs and their counsel, it appears there are few options that will convey both the seriousness of Plaintiffs' repeated disregard for the Court's orders and their discovery obligations and ensure compliance in the future, particularly where they have already chosen to ignore an order compelling discovery.

As Defendants have said, if Plaintiffs are not prepared to prosecute their claims, Defendants would not object to the dismissal with prejudice of those claims. *See Dickerson v. Bd. of Educ. of Ford Heights, Ill.*, 32 F.3d 1114, 1117 (7th Cir. 1994) ("A court is permitted to infer a lack of intent to prosecute a case from a pattern of failure to meet court-imposed deadlines."); *Vega v. Chipotle Mexican Grill, Inc.*, No. 14 C 7124, 2015 WL 7776877, at *3 (N.D. Ill. Dec. 3, 2015) ("The Court may infer lack of intent to prosecute from a pattern of failure to meet court-imposed deadlines and the failure to appear at a scheduled hearing.").

But Defendants *do* object to Plaintiffs' continued delay and their willful failure to follow the Court's orders. Although Defendants would oppose any attempt by Plaintiffs to further extend discovery, to the extent Plaintiffs' and their counsel's schedules pose difficulties for them to sit for depositions by the extended deadline, they should have sought relief from the Court. But they didn't; they have simply decided not to comply with the Court's order. Plaintiffs cannot slow-walk their own lawsuit—particularly when they have sued the electoral campaign of the now-sitting Governor and Lieutenant-Governor of Illinois—by ignoring their obligations. *See James v. McDonald's Corp.*, 417 F.3d 672, 681 (7th Cir. 2005) ("Once a party invokes the judicial system by filing a lawsuit, it must abide by the rules of the court; a party cannot decide for itself when it feels like pressing its action and when it feels like taking a break . . . .") (quotation marks omitted). Plaintiffs' claims are baseless, but they are serious. Plaintiffs chose to sue Defendants, and they cannot do so and then claim they are too busy to prosecute their case and afford Defendants their right to defend against Plaintiffs' specious claims.

In these circumstances, dismissal with prejudice is warranted.

C. The Remaining Plaintiffs Should Be Ordered to Supplement Their Interrogatory Responses and Pay Any Fees and Costs Incurred from Having to Re-Depose Them

As noted above, Plaintiffs also continue to withhold information based on the untimely objections to Defendants' interrogatories. For the remaining four Plaintiffs for whom counsel has provided deposition dates, the Court should again order them to supplement their interrogatory responses.[10]

In their motion to compel, Defendants requested that the Court "deem the objections waived and order Plaintiffs to produce all documents they are withholding due to those objections and provide further response to any interrogatories that they did not answer fully because of objections." *See* Mot., ECF No. 48 (Oct. 15, 2019) at 10. The Court granted Defendants' motion. In doing so, the Court ruled that Plaintiffs waived their untimely objections to Defendants' discovery requests and did not limit its remedy for Plaintiffs' discovery violations to the production of documents. *See* Order, ECF No. 52 (Oct. 22, 2019). Defendants therefore ask the Court to clarify that its order compels Plaintiffs to supplement their interrogatory responses to the extent Plaintiffs have withheld information or otherwise failed to answer those interrogatories fully based on their objections.

The failure to provide this information—particularly the information about what complaints Plaintiffs allegedly made, to whom, and when—prejudices Defendants' deposition preparation and their overall ability to defend the case. *See* *Moser v. Gounaris*, No. 08 C 5067, 2010 WL 3806637, at *2 (N.D. Ill. Sept. 23, 2010) ("[T]he plaintiff's failure to file written responses has prejudiced the defendants as they are unable to obtain answers to their interrogatories which would in turn allow them to properly defend their case."). Defendants are entitled to complete answers to the interrogatories before deposing Plaintiffs.

[10] Should the Court decline to dismiss the other eight Plaintiffs' claims, Defendants request that the Court order them to supplement their interrogatory responses on the same terms outlined above.

Should Plaintiffs not provide complete responses by the date of the first deposition (currently set for November 27), Defendants request that the Court allow Defendants leave to re-take at Plaintiffs' and their counsel's expense any deposition as necessary to address later-supplemented interrogatory answers. *See* Fed. R. Civ. P. 37(b)(2)(C).

D. The Court Should Also Grant Defendants Their Reasonable Attorneys' Fees and Costs Associated with this Motion

Finally, Plaintiffs' failures leading to this motion were not "substantially justified." *See id.* Accordingly, in addition to dismissal for the eight Plaintiffs and supplementation of interrogatory answers by the remaining four Plaintiffs, the Court should therefore order Plaintiffs and their counsel to pay Defendants' reasonable attorneys' fees and costs related to this motion. *See Toyo Tire & Rubber Co. v. Atturo Tire Corp.*, No. 14 C 206, 2018 WL 3533315, at *10 (N.D. Ill. July 23, 2018) (ordering the plaintiff, under Federal Rule of Civil Procedure 37(b)(2)(C), to pay the defendant's "attorneys' fees and costs related to bring this motion" for sanctions).

V. CONCLUSION

Defendants respectfully request that the Court enter an order (1) dismissing with prejudice the claims of the eight Plaintiffs whom counsel have refused to provide dates for depositions to occur by December 10, (2) compelling the remaining four Plaintiffs to supplement their interrogatory responses with information withheld on the basis of untimely and waived objections and ordering Plaintiffs and their counsel pay Defendants' reasonable fees and costs associated with retaking any deposition based on any late supplementation, and (3) granting Defendants' reasonable attorneys' fees and costs in bringing this motion.

Dated: November 21, 2019

Respectfully Submitted,

JB PRITZKER FOR GOVERNOR, JULIANA STRATTON, AND CAITLIN PHARO

By: */s/ William B. Stafford*
One of Their Attorneys

William B. Stafford
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Tel: (206) 359-8000
Fax: (206) 359-9000
WStafford@perkinscoie.com

CERTIFICATE OF SERVICE

I, William B. Stafford, certify that on November 21, 2019, a copy of the foregoing was sent via the Court's electronic filing system and email to the following:

Jeanette Samuels
SAMUELS & ASSOCIATES, LTD.
2925 S. Wabash Avenue, Suite 104
Chicago, Illinois 60616
Tel: (872) 588 – 8726
Fax: (872) 444 – 3011
sam@chicivilrights.com

Shay T. Allen
THE LAW OFFICE OF SHAY T. ALLEN
19150 S. Kedzie Ave., Ste. 201
Flossmoor, IL 60422
Tel: (708) 960-0113
sallen@attorneyshaytallen.com

By: */s/ William B. Stafford*